



PROPOSED RULE MAKING  
(RCW 34.05.320)

CR-102 (7/22/01)  
Do NOT use for expedited  
rule making

Agency: Public Disclosure Commission

- ☒ Preproposal Statement of Inquiry was filed as WSR 04-05-070 & 04-01-147 ; or  
☐ Expedited Rule Making -- Proposed notice was filed as WSR \_\_\_\_\_; or  
☐ Proposal is exempt under RCW 34.05.310(4).

- ☒ Original Notice  
☐ Supplemental Notice  
to WSR \_\_\_\_\_  
☐ Continuance of WSR \_\_\_\_\_

(a) Title of rule: (Describe Subject) Title 390 WAC - Rules relating to sample ballots and slate cards (WAC 390-17-030); status of citizen complaints (WAC 390-37-030); exemptions from political advertising (WAC 390-18-030); explanation and reporting of in-kind contributions (WAC 390-16-207); promise or promise to pay (WAC 390-05-295); personal use of contributions (WAC 390-16-238); citizen action letters (WAC 390-37-041); and PDC regular meetings (WAC 390-12-010).

Purpose: To clarify reporting requirements for candidates and political committees, conform to recent case law and update Commission's regular meeting schedule.  
Other identifying information: None.

(b) Statutory authority for adoption: RCW 42.17.370

Statute being implemented: 42.17 RCW

(c) Summary: The proposed amendment to WAC 390-17-030 conforms to updated statute by removing the requirement that federal political committees file C-5 reports if they are currently filing reports with the Federal Election Commission. The proposed amendment to WAC 390-37-030 reinstates section (3) as a result of recent case law. The proposed amendment to WAC 390-37-041 removes reference to the tolling language and conforms to recent case law. The proposed amendment to WAC 390-18-030 exempts political tickers from the "top five contributor" requirement. The proposed amendment to WAC 390-16-207 indicates that in-kind contributions are to be treated the same as cash contributions. A new rule, WAC 390-05-295, defines promise or promise to pay. The proposed amendment to WAC 390-16-238 further defines personal use. The proposed amendment to WAC 390-12-010 updates the location and schedule of regular meetings.

Reasons supporting proposal: The proposed amendments and new rule will clarify the statutory requirements under chapter 42.17 RCW and provide guidance to those entities required to disclose campaign contributions and expenditures.

(d) Name of Agency Personnel Responsible for:

Office Location

Telephone

1. Drafting..... Susan Harris

711 Capitol Way, Room 206, Olympia

(360) 753-1981

2. Implementation.... Susan Harris

711 Capitol Way, Room 206, Olympia

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3. Enforcement..... Phil Stutzman

711 Capitol Way, Room 206, Olympia

(360) 664-8853

(e) Name of proponent (person or organization): Public Disclosure Commission

- ☐ Private  
☐ Public  
☒ Governmental

(f) Agency comments or recommendations, if any, as to statutory language, implementation, enforcement and fiscal matters:  
None

(g) Is rule necessary because of:

Federal Law?

☐ Yes

☒ No

If yes, ATTACH COPY OF TEXT

Federal Court Decision?

☐ Yes

☒ No

Citation:

State Court Decision?

☐ Yes

☒ No

(h) HEARING LOCATION:

Commission Meeting Room  
Evergreen Plaza Building  
711 Capitol Way, Room 206  
Olympia, Washington

Submit written comments to:

Susan Harris (sharris@pdc.wa.gov)  
Public Disclosure Commission  
PO Box 40908  
Olympia WA 98504-0908  
FAX (360) 753-1112 By (date) May 20, 2004

Date: May 27, 2004 Time: 9:00 a.m.

DATE OF INTENDED ADOPTION: May 27, 2004

Assistance for persons with disabilities: Contact  
Ruthann Bryant by May 13, 2004

TDD ( ) \_\_\_\_\_ or (360) 753-1111

NAME (TYPE OR PRINT)

Susan Harris

SIGNATURE

Susan Harris  
Assistant Director

4-6-04

CODE REVISER USE ONLY

COMMUNICATIONS OFFICE  
STATE OF WASHINGTON  
FILED  
APR 6 2004  
TIME \_\_\_\_\_  
WSR \_\_\_\_\_

(j) Short explanation of rule, its purpose, and anticipated effects:  
See Summary and Reasons supporting proposal above.

Does proposal change existing rules? ☒ YES ☐ NO

If yes, describe changes:

(k) Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.  
A copy of the statement may be obtained by writing to:

telephoning: (     )

faxing: (     )

☒ No. Explain why no statement was prepared.  
The implementation of these rules has minimal impact on small businesses.

(l) Does RCW 34.05.328 apply to this rule adoption? ☐ Yes ☒ No

Please explain: The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to this rule adoption pursuant to subsection (5)(a)(i) of section 201, and, to date, JARRC has not made section 201 application to this rule adoption.

AMENDATORY SECTION (Amending WSR 98-12-034, filed 5/28/98, effective 6/28/98)

**WAC 390-16-207 In-kind contributions--Explanation and reporting.** (1) An in-kind contribution occurs when a person provides goods, services or anything of value, other than money or its equivalent, to a candidate or political committee free-of-charge or for less than fair market value, unless the item or service given is not a contribution according to RCW 42.17.020 (14)(b) or WAC 390-17-405.

(2) An in-kind contribution also occurs when a person makes an expenditure that

- Supports or opposes a candidate or a ballot measure,
- Meets the definition of contribution in RCW 42.17.020 (14) or WAC 390-05-210, and
- Is other than a monetary contribution made directly to a candidate or political committee.

For example, an in-kind contribution occurs when a person, after collaborating with a candidate or a candidate's agent, purchases space in a newspaper for political advertising supporting that candidate or opposing that candidate's opponent.

(3) According to RCW 42.17.095(8) and WAC 390-16-238, a candidate may not use his or her campaign funds to make a contribution, including an in-kind contribution, to another candidate or a political committee. However, under RCW 42.17.095(3), a candidate may use surplus funds as defined in RCW 42.17.020 to make a contribution to a political party or caucus political committee.

**(4) In-kind contributions to recipients who have limits.**

(a) If a state office candidate receives in-kind contributions from any person valued at more than \$25 in the aggregate during an election cycle, the contribution is reportable by the giver and the recipient pursuant to chapter 42.17 RCW and is subject to the applicable contribution limit provided in RCW 42.17.640.

(b) If a bona fide political party or legislative caucus committee receives in-kind contributions from any person valued at more than \$25 in the aggregate during a calendar year, the contribution is reportable by the giver and the recipient pursuant to chapter 42.17 RCW and is subject to the applicable contribution limit provided in RCW 42.17.640.

(c) If a state official against whom recall charges have been filed or a political committee supporting the recall of a state official receives in-kind contributions from any person valued at more than \$25 in the aggregate during a recall campaign, the contribution is reportable by the giver and the recipient pursuant to chapter 42.17 RCW and is subject to the applicable contribution limits provided in RCW 42.17.640.

(5) **Political committees that make in-kind contributions.** A political committee that makes in-kind contributions to a candidate or political committee totaling more than \$50 in the aggregate during a reporting period must identify the recipient and the amount of the contribution as part of its C-4 report covering that period.

If the in-kind contribution is in the form of an expenditure that has been obligated, but not yet paid, the identity of the recipient candidate or political committee, along with a good faith estimate of the value of the contribution, must be disclosed in part 3 of Schedule B, in addition to the other information required by the form. When the expense is paid, the recipient's name and the amount of the contribution must be disclosed on Schedule A, along with the other information required by the form.

If a political committee provides equipment, property or anything else of value owned, leased or controlled by it to a candidate or political committee, the contributing committee must attach a statement to its C-4 report showing the name of the candidate or political committee to whom the contribution was made and the date, description and fair market value of the in-kind contribution.

(6) **Reporting by recipients.** Except as provided in subsection (4), in-kind contributions from one source are not reportable by the recipient candidate or political committee until the aggregate value of all in-kind contributions received from that source during a reporting period is more than \$50. If this threshold is met, the in-kind contributions must be reported in part 1 of Schedule B to the C-4 report covering that reporting period.

(7) **Valuing in-kind contributions.**

(a) For purposes of determining the value of goods or services provided as in-kind contributions, refer to WAC 390-05-235, Definition--Fair market value.

(b) If an expenditure that constitutes an in-kind contribution is made, the value of the in-kind contribution to a particular candidate or political committee is the portion of the expense that benefits the candidate or political committee.

**(8) Application of RCW 42.17.105(8)--Last-minute contributions.**

(a) If an expenditure that constitutes an in-kind contribution is made no later than twenty-two days before a general election and written notice of the in-kind contribution is in the possession of the recipient candidate committee or political committee twenty-two or more days before that general election, the contribution is not subject to the respective \$5,000 or \$50,000 maximum amounts specified in RCW 42.17.105(8).

(b) If an in-kind contribution is in the form of personal services donated to a campaign for the duration of the twenty-one days before a general election, and if written notice of the value of this donation is in the possession of the recipient candidate or political committee twenty-two or more days before the election, that in-kind contribution is not subject to the respective \$5,000 or \$50,000 maximum amounts specified in RCW 42.17.105(8).